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09/720,345	12/22/2000	Koichi Sakamoto	0905-0252P	1126

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EXAMINER

JERABEK, KELLY L

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/720,345	Applicant(s) SAKAMOTO, KOICHI	
	Examiner Kelly L. Jerabek	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-12 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13, and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 4/15/2005 have been fully considered but they are not persuasive.

### **Response to Remarks:**

Applicant's arguments (Amendment page 15) state that since the Iijima reference teaches that a user controls the selection of the combination of cutout and through images based on a desirability factor, the reference cannot be relied upon to teach or suggest "selecting a synthesis target image data...based upon a photographic condition prevailing at the time the background image was photographed" as recited in claims 1 and 13. The Examiner respectfully disagrees. Iijima states that when a user pushes the frame button (61) the CPU (21) reads out a first cut-out image among the cut-out images (a.k.a. synthesis target images) stored in the memory (14A) and the cut-out image (a.k.a. synthesis target images) and a through image (a.k.a. background image) are synthesized to create a composite image (col. 20, lines 8-25; figs. 12,13). The user may then judge whether the displayed cut-out image (22) is a desired cut-out image or not (synthesis target image selection means) and in the case that the cut-out image is not the desired image the user can continue to push the frame button (61) to read out a

cut-out succeeding image recorded in the memory (14A) (col. 20, lines 26-39). **It can be seen in figure 13A that the background image (through image 21) is part of the synthesized image (20). Therefore, when the user judges whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not while observing the synthesized image, it is clear that the photographic conditions prevailing at the time the background image (through image 21) was photographed will be reflected in the synthesized image (20) and thus used in determining whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not. Thus, the Examiner is reading the user-controlled selection as the synthesis target image selection means.**

Applicant's arguments (Amendment page 15) state that in the Iijima reference each cutout image is an image of a different subject and there is no disclosure within Iijima to photograph the same subject under different photographic conditions. Therefore, the Iijima reference cannot be relied upon to teach or suggest the feature of storing data representing a plurality of synthesis target images of a foreground subject obtained by photography under different photographic conditions as recited in independent claims 1 and 13. The Examiner respectfully disagrees. Iijima discloses in figure 1 a digital camera capable of synthesis by combining a through-image with a cut-out image. **The camera includes a cut-out image memory (14A) for storing various cut-out images (col. 19, lines 26-65). The position of a through-image may be adjusted by a user and when a release button (63) is pushed, the part of the**

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image displayed on the screen is cut out to be registered in the cut-out image memory (14A) (col. 19, lines 6-31). The Examiner is reading this feature as obtaining the cut-out images by photography that is performed under different photographic conditions (position of the through-image ) (col. 19, lines 6-65; figs. 10A-10D,11A-11D). It can also be seen in figures 10C and 10D that depending on the selected position of the through-image a plurality of synthesis target images (cut-out images) (fig. 10C, 10D) of a foreground subject (person in figs. 10C,10D) are obtained. For example in figure 10C the torso area of the foreground subject is shown and in figure 10D the head area of the foreground subject is shown. Thus, pushing the release button (63) at each of these positions would store two separate synthesis target images (cut-out images) of the foreground subject (person) in the cut-out image memory (14A).

Applicant's arguments with respect to claims 17-20 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 3, 6-7, and 13 rejected under 35 U.S.C. 102(e) as being anticipated by Iijima et al. US 6,621,524.**

Re claim 1, Iijima discloses in figure 1 a digital camera capable of synthesis by combining a through-image with a cut-out image. Figures 12A and 12B are flow charts showing embodiments of the synthesizing processing operation of the digital camera of figure 1. The camera includes a cut-out image memory (14A) for storing various cut-out images (col. 19, lines 26-65). The position of a through-image may be adjusted by a user and when a release button (63) is pushed, the part of the image displayed on the screen is cut out to be registered in the cut-out image memory (14A) (col. 19, lines 6-31). The Examiner is reading this feature as obtaining the cut-out images by photography that is performed under different photographic conditions (position of the through-image) (col. 19, lines 6-65; figs. 10A-10D, 11A-11D). It can also be seen in

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figures 10C and 10D that depending on the selected position of the through-image a plurality of synthesis target images (cut-out images) (fig. 10C, 10D) of a foreground subject (person in figs. 10C, 10D) are obtained. For example in figure 10C the torso area of the foreground subject is shown and in figure 10D the head area of the foreground subject is shown. Thus, pushing the release button (63) at each of these positions would store two separate synthesis target images (cut-out images) of the foreground subject (person) in the cut-out image memory (14A). Therefore, the Examiner is reading the cut-out images as synthesis target images of a foreground subject. The camera includes an image-sensing means (2) that images an object to photograph a background image (through image (21)) (col. 20, lines 5-8). When a user pushes the frame button (61) the CPU (21) reads out a first cut-out image among the cut-out images (a.k.a. synthesis target images) stored in the memory (14A) and the cut-out image (a.k.a. synthesis target images) and a through image (a.k.a. background image) are synthesized to create a composite image (col. 20, lines 8-25; figs. 12, 13). The user may then judge whether the displayed cut-out image (22) is a desired cut-out image or not (synthesis target image selection means) and in the case that the cut-out image is not the desired image the user can continue to push the frame button (61) to read out a cut-out succeeding image recorded in the memory (14A) (col. 20, lines 26-39). It can be seen in figure 13A that the background image (through image 21) is part of the synthesized image (20). Therefore, when the user judges whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not while observing the synthesized image, it is clear that the photographic conditions prevailing

at the time the background image (through image 21) was photographed will be reflected in the synthesized image (20) and thus used in determining whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not. Thus, the Examiner is reading the user-controlled selection as the synthesis target image selection means.

Re claim 3, The user may judge whether the displayed cut-out image (22) is a desired cut-out image or not (synthesis target image selection means) and in the case that the cut-out image is not the desired image the user can continue to push the frame button (61) to read out a cut-out succeeding image recorded in the memory (14A) (col. 20, lines 26-39). The Examiner is reading the frame button (61) as a selection command input means.

Re claim 6, Iijima discloses a camera including a display (20) for displaying images. The display (20) displays a through image (background image (21)) a cut-out image (synthesis target image (22)) and a synthesized image including both the through image (21) and the cut-out image (22) (col. 20, lines 8-39; fig. 13).

Re claim 7, Iijima states that a user may operate displacement keys (62) in order to displace the cut-out image (synthesis target image (col. 20, line 63 – col. 21, line 2)). Therefore, the Examiner is reading the displacement keys (62) as adjustment command input means since they adjust the position of the cut-out image (synthesis target image).



Re claim 13, see claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 4-5 rejected under 35 U.S.C. 103(a) as being unpatentable over  
Iijima et al. US 6,621,524.**

Re claim 4, Embodiment 3 disclosed by Iijima includes a cut-out image memory (14A) for storing various cut-out images (col. 19, lines 26-65). The position of a through-image may be adjusted by a user and when a release button (63) is pushed, the part of the image displayed on the screen is cut out to be registered in the cut-out image memory (14A) (col. 19, lines 6-31). The Examiner is reading this feature as obtaining the cut-out images by photography that is performed under different photographic conditions (position of the through-image ), thus photographic conditions such as luminance are stored when the cut-out images are stored (col. 19, lines 6-65;

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figs. 10A-10D,11A-11D). It can also be seen in figures 10C and 10D that depending on the selected position of the through-image a plurality of synthesis target images (cut-out images) (fig. 10C, 10D) of a foreground subject (person in figs. 10C,10D) are obtained. For example in figure 10C the torso area of the foreground subject is shown and in figure 10D the head area of the foreground subject is shown. Thus, pushing the release button (63) at each of these positions would store two separate synthesis target images (cut-out images) of the foreground subject (person) in the cut-out image memory (14A). Therefore, the Examiner is reading the cut-out images as synthesis target images of a foreground subject. states that the camera includes a cut-out image memory (14A) for storing various cut-out images (col. 19, lines 60-65). When a user pushes the frame button (61) the CPU (21) reads out a first cut-out image among the cut-out images (a.k.a. synthesis target images) stored in the memory (14A) and the cut-out image (a.k.a. synthesis target images) and a through image (a.k.a. background image) are synthesized to create a composite image (col. 20, lines 8-25; figs. 12,13). The user may then judge whether the displayed cut-out image (22) is a desired cut-out image or not (synthesis target image selection means) and in the case that the cut-out image is not the desired image the user can continue to push the frame button (61) to read out a cut-out succeeding image recorded in the memory (14A) (col. 20, lines 26-39). ). It can be seen that the cut-out images are obtained by photography and that the photography may be performed under different photographic conditions (binary coded pattern, luminance processed pattern) (col. 21, lines 35-42; figs. 13,14). However, embodiment

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3 does not specifically disclose an image adjustment means for adjustment processing of a selected cut-out image.

Embodiment 4 disclosed by Iijima states that the camera includes an up-down key (67) for varying the brightness of the luminance component of a luminance processed pattern of a cut-out image (col. 22, lines 44-67). Thus, the up-down key (67) serves as an image adjustment means for applying a luminance adjustment to a cut-out image. Therefore, it would have been obvious to include the concept of varying the brightness of the luminance component of a cut-out image with a luminance processed pattern as disclosed by embodiment 4 of Iijima in the event that a cut-out image based on a luminance processed pattern is chosen to be combined with a through image as disclosed by embodiment 3 of Iijima. Doing so would provide a means for shifting the brightness of the luminance component towards higher and lower values depending on the effect desired by the user (Iijima: col. 22, lines 49-60).

Re claim 5, see claim 4.

**Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Iijima et al. US 6,621,524 in view of Blank US 5,345,313.**

Re claim 2, Iijima discloses all of the limitations of claim 1 above. However, Iijima fails to distinctly state that the synthesis target image means automatically selects one item of synthesis target image data suited to the background image based upon

photographic conditions of the synthesis target image data and of the background image.

Blank discloses in figures 1-3 a digital image editing system. The system (10) includes a transputer (44) a video camera (16) and a video monitor (20) (col. 5, line 44 – col. 6, line 55). Figure 6 is a block diagram showing the processing steps of the system (10) when a checkerboard background is used. At block (134) of the processing a background (133) against which the operator (22) of the system (10) desires to place the image of the object can be selected from the memory of the transputer (44) through the use of the control (32) so that the operator can choose the background against which he wants the image to be positioned (a.k.a. based upon photographic conditions of the image and the background) (col. 12, lines 59-67; figs. 7A – 7D). However, the transputer (44) may also select the background automatically (col. 12, lines 67-68). Therefore, it would have been obvious for one skilled in the art to have been motivated to include the concept of automatically selecting an image and a background to be synthesized as disclosed by Blank in the digital camera capable of synthesis by combining a through-image with a cut-out image as disclosed by Iijima. Doing so would provide a means for overlaying an object image on a selected background to produce an integrated image of the object and the background (col. 4, lines 60-63).

**Claim 17-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Iijima et al. in view of Konishi et al. US 5,420,635.**

Re claims 17-20, Iijima discloses all of the limitations of claims 1 and 13 above. Iijima states that when a user pushes the frame button (61) the CPU (21) reads out a first cut-out image among the cut-out images (a.k.a. synthesis target images) stored in the memory (14A) and the cut-out image (a.k.a. synthesis target images) and a through image (a.k.a. background image) are synthesized to create a composite image (col. 20, lines 8-25; figs. 12,13). The user may then judge whether the displayed cut-out image (22) is a desired cut-out image or not (synthesis target image selection means) and in the case that the cut-out image is not the desired image the user can continue to push the frame button (61) to read out a cut-out succeeding image recorded in the memory (14A) (col. 20, lines 26-39). It can be seen in figure 13A that the background image (through image 21) is part of the synthesized image (20). Therefore, when the user judges whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not while observing the synthesized image, it is clear that photographic conditions prevailing at the time the background image (through image 21) was photographed will be reflected in the synthesized image (20) and thus used in determining whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not. However, Iijima does not go into detail regarding what photographic conditions are used to judge whether the displayed synthesis target image (cut-out image 22) is a desired cut-out image or not.

Konishi discloses in figure 5 a still video camera capable of synthesizing images of varying exposure in order to generate a composite image that is properly exposed. The video camera includes a strobe device (28) that is adjusted for objects that are

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similar in luminance and are in positions relatively nearer and farther away from the camera (col. 19, line 54 – col. 20, line 23). A first imaging is performed using an amount of strobe light so as to properly expose an object that is far away from the camera and a second imaging is performed using an amount of strobe light so as to properly expose an object that is near to the camera and the two obtained images are then synthesized to create a single image of proper exposure (col. 20, lines 4-23). Therefore, it would have been obvious for one skilled in the art to have been motivated to choose images to be synthesized based on photographic conditions such as a strobe lighting condition as disclosed by Konishi in the digital camera capable of synthesizing images disclosed by Iijima. Doing so would provide a means for flashing a strobe device in order to obtain image data suitable for inlaying synthesis even if a clear distinction between a bright portion and a dark portion in an object to be picked up is not made (Konishi: col. 19, lines 54-59).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Contacts***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly L. Jerabek whose telephone number is **(571) 272-7312**. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy Garber can be reached on **(571) 272-7308**. The fax phone number for submitting all Official communications is 703-872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the Examiner at **(571) 273-7312**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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